App. F. IX-4

File No. 49-28.

Previous References

Ki. 4079-1513a, 13
14a 15

Serial Nos. 1 & 2.

Later References

615 240-29.

General and Revenue Secretariat

Serial Nos. 1 to 2

Part B for March 29

SUBJECT

The illegal enforcement of rigorous imprisonment on prisoner No. 8359, Personal, of the Bangalore Central Jail.

Sl. 2 No 121-01-2 d/27.

To The D. y. of Prisons.
The Registrar Chief Court.

passes orders about the illegal enforcement of rigorous imprisonment on prisoner No. 8359, Personal of the B. C Jail
-9.

General and Revenue Secretariat | Prisons File No 49. of 1928.

Serial No.

From the Inspector General of Prisons
in Mysore

No C. 224-14 D CO. 12.27
for hands for the orders of Govt the facts of
Correspondence in Connection with the illegal
enforcement of Rigorous imprisonment on
prisoners 8359 Penumal of the Bangalore
Central Jail.

Subd. The facts of the case has been fully gone into
by the Inspector General of Prisons. The following
aspects of the Case deserve Consideration:-
1 Interest of the accused (2). laxity of the Judicial
Dept (2). laxity of the Jail Dept.
1. Interest of the accused:- The Sentence on the
accused was quashed by the Sessions Judge of
Bangalore and this was Communicated to the
Supdt Central Jail on 4.9.28. Although the reference
was received in the Jail Office on 5.9.28, it
was traced only 11.10.28 and the quash order
appears to have been given effect then only.
Thus the prisoner was subjected to illegal
enforcement of rigorous imprisonment for a
period of over One month! This would have caused
to the prisoner a good lot of pain and trouble
and he may probably may have a Cause
of action for damages for over detention over
it not otherwise. Perhaps the question of
granting him a Conspicuous Remission
in the Subsequent Sentences passed on him
may perhaps be Considered.

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(a) Sessions Judge

Law & the Judicial Dept :- It was the Sessions Judge who discovered the mistake on 25.9.28 and made a reference to the Superd. Dt. Jail. The Sessions Judge at the time of making the reference sent to the Superd Dt. Jail a copy of the Reversal Judgment. The mistake would have been avoided a little earlier. The reply of the Superd-Dt. Jail to the Sessions Judge in the matter requires some explanation in the Law Dept

(b) Dist magistrate K.G.F. :- under Rule 459 of the Mysore Jail manual the original Commitment warrant must be returned to the Court concerned within 36 hours after the release of the prisoner. The Dist magistrate K.G.F. Communicated the Reversal Judgment on 3/4.9.28 and called for the Return of the warrant. As the warrant has not been returned within the period of 36 hours, he ought to have taken further action in the matter which he appears not to have done so. Further when the Superd Dt. Jail reported to the magistrate the non receipt of his Communication dated 3/4.9.28, the magistrate instead of sending a copy of the Communication stated affirms that the Communication has been despatched to him. This has contributed to further delay.

Law & the Jails Dept :- There appears to have been some wrong in. The Communication of the Dist magistrate K.G.F. dt 3/4.9.28 has received on 5.9.28 by the Superd and marked 'Chief Jailor'. The paper being an important the Superd must

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Law made a note of it in his own book and is must have seen that action taken on the reference immediately. It is not understood why the reference that is marked to the Chief Jailor should be sent to the office in the absence of the Chief Jailor. It should have been delivered in the absence of the Chief Jailer, to the Dy Jailor on duty who must make a entry of the same in the Registers required to be maintained under Section 21 of the Prisons Act. Further there is a reference to the file by the Asst Sessions Judge Chirayu where he has forwarded a copy of the judgment for delivery to the applicant. If this judgment pertained to this case, the prisoner who appears to have received copy of the judgment would have come to know the Reversal of the Sentence and would have informed the Jail authorities.

This related to a different case 1 of 28-29. The present case is 10 of 28-29 dcg

For orders.

3). It will be seen from the report of the Dy. P. that the mistake was a serious one. The Supdt does not appear to have realized the importance of the matter even after he was apprised of it by the Sessions Judge. Either the Chief Jailor or the Deputy Jailor should always be available in the Jail at all hours. If the Chief Jailor was absent the communication should reach the Dy Jailor & not given to the Ministl Branch

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4) The reversal of the payment is a matter which concerns the executive authorities of the Jail in the first instance and not the Munsh

But it is the duty of the Munshi branch to see that such papers are placed in the hands of the executive officers

5) If the Superintendent had only been more alert and enquired ~~if the prisoner had been released~~ during his visit to the Jail, the next day, Wh the prisoner had been released or sent to the Industrial section, there would have been no such irregular

There is no justification for such an inference. He may not have remembered the case or he may have thought that the Chief Jailor would take needful action

He appears to have thought the matter to be one of routine and therefore did not require his personal attention. There appears to have been no justification for fining the Head munshi especially when the latter had not seen the Cermn nor it had been registered—

K.P.
13/1/28

6) A Pariah resident of K.G.F. by name Perum was convicted for an offence under section 353, I.P.C. by Special Magistrate of that place and sentenced to rigorous imprisonment for one year on the 20th June 1928. When was undergoing imprisonment in the Bangalore Central Jail the conviction was set aside in appeal by the Sessions Judge of the Bangalore Division and the fact was communicated to the Superintendent of the Jail by the Special Magistrate, K.G

NOTE—Contn. sheet

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on the 4th September. The convict should in the ordinary course of events have been released immediately on receipt of the above communication the next day. But he was wanted for trial in another case before the Sessions Judge, and a body warrant had been received against him before receipt of the said communication. So on receipt of that communication, he should have been kept in custody as an under trial prisoner. But instead, he was allowed to be incarcerated as a prisoner undergoing rigorous imprisonment for a period of 22 days owing to the mislaying of the communication in question.

7) We have now to decide — who is responsible for this irregularity and what should be done to prevent a recurrence of such irregularities in future.

8) From a perusal of the records, it is seen that the communication from the Special Magistrate, K.G.F. was received by the Superintendent of the Bangalore Central Jail on the 5th September and was referred to the Chief Jailor on the same date. But it mysteriously went astray and never reached the hands of the Chief Jailor; and it was subsequently traced to the unused table drawer of an acting clerk by name Venkatakrishnaiya. There is nothing to prove conclusively that the reference was received by this clerk on the date it was referred to the Chief Jailor or subsequently. It would not therefore be right to make him liable for any blame in this behalf.

9) On the other hand, it would be reasonable to hold that it is the system of dealing with papers in the Jail that is at fault. Apparently, till the date of occurrence

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of this irregularity, all the papers received did not find an entry in the Amad Register and there could possibly be no scope therefore to find out what papers were received on a particular day and to whom each of them was referred. This defect is since reported to have been rectified by the Superintendent who has not only enforced the entry of all receipts in the Amad Register, but has also introduced a system of check and counter-check.

10) It cannot but be observed in this connection that the Head Clerk, who is the ministerial head of the office, should have seen to the proper enforcement of the Rules of Office procedure and brought omissions in this direction promptly to the notice of the Superintendent. He cannot therefore be absolved from blame for remissness in this direction.

11) The next point for decision is — how far should the Superintendent of the Jail be held responsible for the irregularity. He was posted to the charge of the Jail only recently. All the same, it was his duty to have found out how far the rules of office procedure were being followed in his office and remedied defects brought to notice from time to time instead of waiting till he was compelled to do so after the present unfortunate occurrence.

12) Another point that requires to be threshed out is — whether the Superintendent was bound to take action about releasing the prisoner merely on receipt of a communication to that effect from the original court

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without a copy of the judgment from the appellate court to serve as an authority for the same. The Superintendent seems to hold that the receipt of a copy of the judgment of the appellate court is a *sine qua non* for any action to be taken by him in this connection; and there appears to be considerable force in his contention. Even the Sessions Judge does not dispute this contention as may be gathered from the explanation offered by him for his omission in his letter of the 20th October to the Superintendent in which he says:

> "A copy of the order revising sentence was not sent to you in this particular case from this Court to avoid the probable mistake that might arise in the Central Jail by releasing the prisoner who was also required in K.S.C. No. 1 of 28-29 as Court was not aware if a remand warrant been sent by the Committing Magistrate"

Article 404 of the Mysore Jail Manual also contemplates that the purport of an order disposing of an appeal should on receipt, be communicated to the prisoner concerned in the presence of the Superintendent who should endorse on the order a certificate to the effect that it has been so communicated. It was therefore a clear omission on the part of the Sessions Judge not to have sent a copy of the judgment to the Superintendent of the Jail. There is a similar omission on the part of the Committing Magistrate in not having sent a remand warrant

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(5 the jail (5 authorise the detention of a released convict in connection with a subsequent trial.

13) Suitable instructions will have (5 be issued (5 both original and appellate courts (5 prevent the recurrence of such omissions in future.

14) There now remains the question — whether the man affected by the irregularity is entitled (5 any relief. He has since been convicted under section 379, I.P.C. and sentenced (5 rigorous imprisonment for 7 years. But it appears only right that he should be granted a rebate (5 the extent of the period for which he was illegally made (5 suffer rigorous imprisonment.

15) The Law Secretariat may also be consulted before taking final action on the lines indicated above.

Genl Secn.) 15/12/28

Please put up tomorrow
20/12/28.

Whether also there have been similar cases in the past. Pl. submit thro' Secy
20/12/28

u Pris 60-24-2 d — F
Police 211-25-6 W — H
put up below-

1 Pris. 40-06-3 d — S
Pris. 40-19-15 — T

NOTE—Contn. Sheet.

(5 put up after the records return from Sessions Judge's office.
11/2

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16) I wonder why the file of a case of overdetention has not yet been received? There has been a great delay in its submission. The A.S. Cuttack should look into the matter at once.

R.G. 9/2

17) Put up at once. I have reminded the case worker more than once.

Secy 11/4/29

18) The delay is due to the searching of old files in the Records & also from the Office of the Prisons Office - which are put up below.

11/2

19) Most of the files put up relate to over-detention of prisoners on account of delay in intimating the realisation of the fine imposed on the prisoner. Only one file (Prisons 40 of 1906-07) relates, as in the present case, to over-detention on account of the laxity on the part of the jail officials in giving effect to the order passed by an appellate court quashing the sentence of the original court. In this case, the displeasure of Govt. was communicated to the Supt; the acting Chief Jailor was suspended for one month and debarred from promotion; and the Head Clerk

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8588/14/V

suspended for three months and reduced to the next lower grade.

20) The present case may be dealt with on its merits and suitable orders passed.

Gen' Secy) 12/4/29

3rd member — 14/2/29.

21) This is a case in which an order from the Court of the Special Magistrate, Kolar Gold Field to the Superintendent, Central Jail, to return the warrant of a prisoner to the Court as the conviction and sentence had been set aside on appeal by the Sessions Judge, was not given effect to by the Superintendent for about 20 days when the mistake on being pointed out by the Sessions Judge was rectified. The prisoner whose conviction and sentence had been set aside was required in another connection and had to be detained as an undertrial prisoner. Consequently, the mistake in the Jail is one not of over detention of a prisoner who should have been released, but one of keeping him as a prisoner undergoing rigorous imprisonment when he should have been detained only as an undertrial prisoner.

22) The explanation is that the Magistrate's order dated 3/4th September 1928 which was received by the Superintendent on the 5th idem and referred by him to the Chief Jailor the same day did not reach the latter officer and was after receipt of a reference from Sessions Judge and search in the office found among

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the papers of an acting clerk not dealing with the su
ject. The Superintendent has fined the head clerk a
the acting clerk with whom the paper was found, five
rupees each, but the I.G. of prisons seems to consid
that this is not an adequate disposal of the case.
Government have always taken a very serious view of
inattention of this nature to orders of Courts in re
pect of detention of prisoners in Jail.

23) The release of a prisoner is a matter which under the Jail Manual requires the personal attentio of the Superintendent. The person to be released ha to be brought before the Superintendent with all pap and registers connected with him; the Superintende has to compare the entries in the warrant with those in the registers, he has to sign certain endorsement and initial the registers on the warrant (Vide Art.4 Jail Manual). In this case therefore as soon as th communication from the Court was received it was the duty of the Superintendent to have taken immediate action for the release. (There was nothing in the Court order to indicate that although the conviction and sentence ~~was~~ were set aside the man was to be detaine So, as soon as the Court's communication was receive the Superintendent should have regarded the case as requiring the release of the prisoner. It would be only when the registers regarding the case were - - - examined that it would have been found that he had t be detained as an undertrial prisoner). But the Superintendent has merely referred the matter to the

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Chief Jailor and has apparently forgotten all about it. In his explanation the Superintendent makes muc of the fact that a copy of the order of the Appella Court was not received. This no doubt is an irregularity, but it by no means lessens the responsibili of the Superintendent. The original Court has communicated to him the fact that the conviction and sentence ~~had~~ have been set aside and has asked for the re turn of the warrant. This is a matter which require immediate attention independently of receipt or non-receipt of the copy of the order of the Appellate Court.

24) In his explanation dated the 6th November 192 the Superintendent says "If it was a question of release, the non-appearance of the prisoner before me for release would have invited my personal attentio This was merely a case of a change in the manner of detention and therefore there was no necessity for him to appear before me". This explanation is quit valueless. When the Superintendent received the order of the Court he could only take the case as or requiring the immediate release of the prisoner and it would be only by subsequent investigation that he would find that the case was not one of release but one of detention as undertrial prisoner.

25) I am of opinion that the displeasure of Gover ment should be communicated to the Superintendent fo the negligence that he has shown in this case.

26) The Superintendent has reported that he has now made proper arrangements for introducing a syste

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of check and countercheck by opening a register at the main gate for noting down the numbers and sour of every incoming tappal besides continuing the us Ama

27) From the papers on the file, it is seen tha the Special Magistrate of the Kolar Gold Field in calling the warrant of his Court failed to send a mand warrant for the detention of the prisoner for pearance in another case. An explanation for this omission will have to be called for and dealt with due course.

lm
21.2.29

28) Dewanted
chiefsec/.

RG
25/2

29) I agree
Mm
26.2.29

30) Draft
RG
28/2/29.

I.O. is submitted for approval
After issue of this G.O. the f
will be referred to Protection
for taking necessary action as obt
by number in para 27.

RB
7/3

32) The case is not ripe for final orders yet. It is a Council matter & has to be submitted to His Highness. In the meanwhile, the explanation of the Special Magistrate of the K.G.F. has to be called for.

WD 01714—GPB—30,000—18-4-28

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146-18-3-4
40-19-15-T

33) The previous files relating to certain irregularities in the Bareilly Central Jail were treated as Schedule matter.

34) In the meantime may the file of records received from the D.J. Pilibhit be forwarded to the Registrar, Ch. Court for getting the explanation of the S.J. Magistrate, K.G.D. with his remarks.

Put 8/3

35) The Secretary has directed that a draft may be put up Attention is invited to the Schedule B of the Council Rules of business under which the case does not fall and it can not possibly be treated as a Council matter unless the Govt orders to that effect under the proviso in Rule 13(a).

KP 8/3

36) Put up a clean copy of draft as revised.

Typed draft submitted for approval. dcg 11/3/29

37) Put 12/3 There is no need to consider this as a Council case as no reduction or suspension etc is involved. But it may be desirable to pass orders once for all after obtaining the explanation of the Magistrate concerned. If this is approved, the file will be sent u-o. to the Registrar of the Chief Court for getting the explanation and furnishin

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JEWAN'S OFFICE
22. MAR. 1929
No. 4280

9839/14/3

the opinion of the judges thereon.

Genl Secy) 12/3/29

DJ for appy (After this is the matter may be pursued with upon the K.G.F.

3rd Member 14/3/29. Majte.)

A.J. Reasoning upheld 15/3/29

Revised draft submitted as per personal instruction

3rd Member) 21/3/29

Majte return to the Secy for expression 21.3.29

DJ Cowan 22/3/29

22-3-29

For perusal before Chy Ch. Legislative Counsel 23/

25/3/29

eneral and Revenue Secretariat | Pri File No 49 of 1928

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2	To The D.C. & Persons The Registrar each court No 9 dtd 12/01-2 dt 24.3.2 passes orders about the illegal enforcement & rigorous imprisonment on Persons No 8359 personal & the B.C. Jail.

B Shiv
28/3

C No. 224-1 Office of the Inspector-General of Prisons in Mysore,
Dated Bangalore, 10th December 1928.

Case me file containing 32 papers

3 v / C.W

GENERAL MISCELLANEOUS BRANCH
R 4582
11 DEC. 1928

From

The Inspector-General of Prisons in Mysore, Bangalore.

Mr. T.K.S. Please make a list of papers in the file. (Pages 1-32)

To

The General Secretary to the Government of H.H. the Maharaja of Mysore, Bangalore.

Pric 49-28

Sir,

I have the honour to forward herewith, the file of correspondence in original (to be kindly returned when done with) in connection with the illegal enforcement of rigorous imprisonment on prisoner No. 8359 Perumal of the Bangalore Central Jail.

The facts of the case are as follows:-

Prisoner No. 8359 Perumal was undergoing a sentence of one year's rigorous imprisonment passed on him by the Assistant Commissioner and First Class Magistrate, Kolar Gold-Fields in C.C. No. 747 of 27-28 on the file of the said Court. The conviction and sentence was set aside on appeal by the Sessions Judge Bangalore Division, in Criminal appeal No. 10 of 28-29 and the same was communicated to the Superintendent, Bangalore Central Jail by the convicting Magistrate in his No, 202 dated 3/4-9-28 The said communication was received by the Superintendent of the Jail on 5-9-1928 but was not given effect to until after the mistake was found out by the Sessions Judge on 25-9-28 when the prisoner was produced before him in a different case with convict clothing on his person, instead of as an undertrial prisoner with his own private clothing. When this mistake was pointed out by the Sessions Judge to the Superintendent, the latter denied all knowledge of having received any communication setting aside the conviction and sentence of the said prisoner But after a prolonged correspondence on the subject and search of the records, the communication in question was found in the Table-Drawer of an irresponsible acting clerk of the Jail, who

who perhaps happened to be in the office when the tappal was sent to this Office on 5-9-28. The Superintendent states that it is usual for the orderly to deliver the signed papers as well as the tappal either to the Chief Jailor or the Head Munshi, but he is not quite certain whether this procedure was followed in the present instance. He has however fined the Head Clerk and acting clerk Rs. 5/- each - the former for not searching and discovering the paper in time and the latter for so carelessly retaining with him such an important paper as the one under reference.

The Superintendent explains that in this particular case there was no overdetention and expresses his regret for irregularity in question. The mistake is however very serio as a pardoned man was made to suffer rigorous imprisonment.

The entire file of correspondence is herewith submit to Government for such orders as they deem fit to pass in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

Inspector-General of Prisons.

Proceedings of the Government of H. H. the Maharaja of Mysore.

Read:-

Letter No. C. 224-14 dated 10th December 1928 from the I.G. of Prisons in Mysore submitting for orders the fil of correspondence relating to the illeg enforcement of rigorous imprisonment o an under-trial prisoner of the Bangalo Central Jail.

Order No. G. 12101-2/G/Rems.

Dated Bangalore, 27.3.29.

A resident of K.G.F. by name P Perumal was convicted for an offence under Section 363 of the I.P.C. by the Special Magistrate and sentenced to - rigorous imprisonment for one year on 20th June 1928. While he was undergoi imprisonment in the Bangalore Central Jail, the conviction was set aside by the Sessions Judge of the Bangalore - Division on appeal and the order was communicated to the Superintendent of Jail by the Special Magistrate, K.G.F. on 4th September 1928. The convict should in the ordinary course on recei of the above communication. In the mea while, however, as he was wanted for trial in another connection before the Sessions Judge, Bangalore, under Sec 379 and 75 of the Indian Penal Code, the - Committing Magistrate issued a body warrant against him which was received by the Superintendent of the Central

Jail before the receipt of the appeal order referred to above. As a result of these two communications, the man should have been kept in custody as an under trial prisoner; but owing to the mislaying of the Magistrate's letter by the office staff of the Bangalore Central Jail, he was treated as a prisoner undergoing rigorous imprisonment. This mistake was noticed by the Session Judge when the man was produced before him for trial and was rectified only on its being pointed out by the Sessions Judge.

The explanation of the Superintendent, Central Jail, for the above irregularity is to the effect --

(1) that the Magistrate's letter dated the 3rd/4th September 1926 communicating the order of acquittal was received by him on the 5th idem;

(2) that it was referred to the Chief Jailor the same day for necessary action

(3) that it did not reach the latter Officer but was somehow mislaid and was found out after receipt of a reference from the Sessions Judge and search in the office; and

(4) that the matter did not attract ~~his~~ the personal attention of the Supt as the case was not one of release but of a change in the manner of detention; and that besides, a copy of the order of the Appellate Court setting aside the conviction was not sent to him as it

should have been.

Government cannot consider this explanation of the Superintendent as satisfactory. The release of a pris is a matter which under the Jail Man requires the personal attention of t Superintendent, and it was his duty t have taken immediate action for the release as soon as the communication from the Special Magistrate was rece There was nothing in the Magistrate' letter to indicate that, although th conviction and sentence were set asi the man was to be detained. As soon the letter was received, the Superin tendent should therefore have regard the case as one requiring the releas of the prisoner. It would be only w the registers regarding the case wer examined that it would have been fou that he had to be detained as an und trial prisoner.

In these circumstances, the I. of Prisons is requested to communica the displeasure of Government to the Superintendent of the Central Jail f the negligence that he has shown in this case.

From a perusal of the records, is seen that the Special Magistrate ~~the~~ K.C.F., in recalling the warrant of his Court, failed to send a remar warrant for the detention of the pri sioner for appearance in another ca

His explanation will be called for for this omission and dealt with in due course.

RG
22/3/19

21/3/19 General Secretary to Govt

The I.G. of Prisons, ~~returning the records~~.
The Registrar, Chief Court. (with a covering letter
with the records.

Copy to Protection Br)